IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 6022 of 2005

Date of Decision: 5.09.2006

Amrik Singh and Anr. ...Petitioners

Vs.

Vardhan Properties and Investment Ltd. ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.P.S.Rana, Advocate,
for the petitioners.

Mr.D.K.Singla, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

By way of present revision petition challenge is to the order dated 19.8.2005 vide which the learned Additional District Judge, Chandigarh has been pleased to adjourn the case for arguments instead of recording evidence on the issues already framed by holding that the issues as well as the evidence as already recorded stand effaced.

The learned Additional District Judge was pleased to efface the issues and the evidence already led by placing reliance on the law laid down by Hon'ble Supreme Court in **F.C.I. Vs. Indian Council for Arbitration 2003 (3) SCC 564** and the judgments of Hon'ble Delhi High

Court in the case of **Sandeep Kumar Vs. Ashok Hans 2004 (3) Arbitration Law Reporter 306 and Sial Brothers Vs. SBEC System 2004 (3) Arbitration Law Reporter 429.**

Learned counsel for the petitioners challenged the order on the ground that reliance by the learned Additional District Judge on the authorities above was totally misconceived in view of the fact that this Court in exercise of powers conferred under Section 82 of the Arbitration and Conciliation Act, 1996 (for short the Act) has been pleased to frame Rules called the Punjab, Haryana and Union Territory, Chandigarh Arbitration and Conciliation Rules 2003.

The learned counsel for the petitioners placed reliance on Rules 1 and 2 which read as under:

> "(1) Save as otherwise expressly provided in the Act or these Rules the following provision of the Code of Civil Procedure 1908 (V of 1908) shall apply to the proceedings before a court in so far as those may be applicable thereto, namely:-
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> i) Section 28, 31, 35, 35-A, 35-B, 107, 133, 148-A, 149, 151 and 152 and
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> ii) Order III, V, VI, IX, XIII, XVI to XIX, XXIV and XLI.
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> (2) (a) For the purpose of facilitating the application of the provisions referred to under sub section (1) the court may construe them with such alterations not affecting the substance,as may be necessary or proper to adopt to the maters before it and
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> (b) The court may, for sufficient reasons, proceed otherwise than in accordance with the said provisions if it is satisfied that

the interests of the parties shall not thereby be prejudiced."

The contention of the learned counsel for the petitioners by placing reliance on these Rules is that the applications moved under the Act have to be dealt with in accordance with these Rules as these Rules have been framed in exercise of powers conferred under Section 82 of the Act, which reads as under:-

> **" Power of the High Court to make rules-** The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act."

Learned counsel for the petitioners further drew the attention of this Court to Rule 5 of the said Rules which provide that an application moved under the Act has to give details of the documents as well as the list of witnesses which are required to be examined in support of the application. The contention of the learned counsel for the petitioners therefore, was that the judgments of Delhi High Court relied upon by the learned Additional District Judge were not applicable for deciding the applications under the Act in Punjab, Haryana and Union Territory. The case of the learned counsel for the petitioners further was that no Rules in exercise of powers under Section 82 of the Act have been framed by the Delhi High Court and it was in this back-ground that the said judgments were passed.

I have considered the arguments raised by the learned counsel for the petitioners and find force in the same. Once by statutory Rules a procedure has been laid down the same has to be followed. Rules applicable in the State of Punjab, Haryana and Union Territory require the leading of evidence on all the applications and therefore, there was no justification to

efface the issues and evidence already led. I have also gone through the judgment passed by the Hon'ble Supreme Court in the case of **Food Corporation of India (supra)** and find that the same was with respect to the application moved under Section 11 of the Act which was treated to be an administrative order as per law then in existence though subsequently Hon'ble Supreme Court has held that the orders under Section 11 are also judicial orders.

For the reasons stated above, this revision is allowed. The impugned order is set aside and the Additional District Judge is directed to proceed with the matter after permitting the parties to lead evidence on the issues already framed.

(Vinod K.Sharma)
Judge

5.09.2006
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